

ASSEMBLY BILL

No. 1322

Introduced by Assembly Member Evans

February 22, 2005

An act to amend Section 170.1 of the Code of Civil Procedure, relating to judges.

LEGISLATIVE COUNSEL'S DIGEST

AB 1322, as introduced, Evans. Judges: disqualification.

Existing law sets forth the grounds for disqualification of a judge, including, but not limited to, the judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last 2 years has participated in, discussions regarding prospective employment or service.

This bill would modify those grounds for disqualification to require more than casual discussions regarding prospective employment.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 170.1 of the Code of Civil Procedure is
2 amended to read:
3 170.1. (a) A judge shall be disqualified if any one or more of
4 the following is true:
5 (1) (A) The judge has personal knowledge of disputed
6 evidentiary facts concerning the proceeding.
7 (B) A judge shall be deemed to have personal knowledge
8 within the meaning of this paragraph if the judge, or the spouse

1 of the judge, or a person within the third degree of relationship to
2 either of them, or the spouse of such a person is to the judge's
3 knowledge likely to be a material witness in the proceeding.

4 (2) (A) The judge served as a lawyer in the proceeding, or in
5 any other proceeding involving the same issues he or she served
6 as a lawyer for any party in the present proceeding or gave
7 advice to any party in the present proceeding upon any matter
8 involved in the action or proceeding.

9 (B) A judge shall be deemed to have served as a lawyer in the
10 proceeding if within the past two years:

11 ~~(A)–~~

12 (i) A party to the proceeding or an officer, director, or trustee
13 of a party was a client of the judge when the judge was in the
14 private practice of law or a client of a lawyer with whom the
15 judge was associated in the private practice of law; ~~or.~~

16 ~~(B)–~~

17 (ii) A lawyer in the proceeding was associated in the private
18 practice of law with the judge.

19 (C) A judge who served as a lawyer for or officer of a public
20 agency ~~which~~ *that* is a party to the proceeding shall be deemed to
21 have served as a lawyer in the proceeding if he or she personally
22 advised or in any way represented the public agency concerning
23 the factual or legal issues in the proceeding.

24 (3) (A) The judge has a financial interest in the subject matter
25 in a proceeding or in a party to the proceeding.

26 (B) A judge shall be deemed to have a financial interest within
27 the meaning of this paragraph if:

28 ~~(A)–~~

29 (i) A spouse or minor child living in the household has a
30 financial interest; ~~or.~~

31 ~~(B)–~~

32 (ii) The judge or the spouse of the judge is a fiduciary who has
33 a financial interest.

34 (C) A judge has a duty to make reasonable efforts to inform
35 himself or herself about his or her personal and fiduciary
36 interests and those of his or her spouse and the personal financial
37 interests of children living in the household.

38 (4) The judge, or the spouse of the judge, or a person within
39 the third degree of relationship to either of them, or the spouse of

1 such a person is a party to the proceeding or an officer, director,
2 or trustee of a party.

3 (5) A lawyer or a spouse of a lawyer in the proceeding is the
4 spouse, former spouse, child, sibling, or parent of the judge or the
5 judge's spouse or if such a person is associated in the private
6 practice of law with a lawyer in the proceeding.

7 (6) ~~(A)~~ For any reason ~~(A)~~ the:

8 (i) *The* judge believes his or her recusal would further the
9 interests of justice; ~~(B)~~ the.

10 (ii) *The* judge believes there is a substantial doubt as to his or
11 her capacity to be impartial; ~~or (C)~~ a.

12 (iii) A person aware of the facts might reasonably entertain a
13 doubt that the judge would be able to be impartial. ~~Bias~~

14 ~~(B)~~ *Bias* or prejudice ~~towards~~ *toward* a lawyer in the
15 proceeding may be grounds for disqualification.

16 (7) By reason of permanent or temporary physical impairment,
17 the judge is unable to properly perceive the evidence or is unable
18 to properly conduct the proceeding.

19 (8) ~~(A)~~ The judge has a current arrangement concerning
20 prospective employment or other compensated service as a
21 dispute resolution neutral or is participating in, or, within the last
22 two years has participated in, *more than casual* discussions
23 regarding ~~such the~~ prospective employment or service, and either
24 of the following applies:

25 ~~(A)~~

26 (i) The arrangement is, or the discussion was, with a party to
27 the proceeding.

28 ~~(B)~~

29 (ii) The matter before the judge includes issues relating to the
30 enforcement of an agreement to submit a dispute to alternative
31 dispute resolution or the appointment or use of a dispute
32 resolution neutral.

33 ~~(B)~~ For purposes of this paragraph, "party" includes the
34 parent, subsidiary, or other legal affiliate of any entity that is a
35 party and is involved in the transaction, contract, or facts that
36 gave rise to the issues subject to the proceeding.

37 ~~(C)~~ For purposes of this paragraph, ~~a~~ "dispute resolution
38 neutral" means an arbitrator, mediator, temporary judge
39 appointed under Section 21 of Article VI of the California
40 Constitution, referee appointed under Section 638 or 639, special

1 master, neutral evaluator, settlement officer, or settlement
2 facilitator.

3 (b) A judge before whom a proceeding was tried or heard shall
4 be disqualified from participating in any appellate review of that
5 proceeding.

6 (c) At the request of a party or on its own motion an appellate
7 court shall consider whether in the interests of justice it should
8 direct that further proceedings be heard before a trial judge other
9 than the judge whose judgment or order was reviewed by the
10 appellate court.